

In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

Subsidiary. A subsidiary of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. (See also *majority owned subsidiary*, *significant subsidiary*, *totally held subsidiary*, and *wholly owned subsidiary*.)

Succession. The term *succession* means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms *succeed* and *successor* have meanings correlative to the foregoing.

Totally held subsidiary. The term *totally held subsidiary* means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

Voting securities. The term *voting securities* means securities the holders of which are presently entitled to vote for the election of directors.

Wholly owned subsidiary. The term *wholly owned subsidiary* means a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly owned subsidiaries.

[47 FR 11435, Mar. 16, 1982, as amended at 47 FR 29840, July 9, 1982; 47 FR 39803, Sept. 10, 1982; 47 FR 54770, Dec. 6, 1982; 48 FR 12347, Mar. 24, 1983; 48 FR 46738, Oct. 14, 1983; 50 FR 25216, June 18, 1985; 55 FR 23923, June 13, 1990; 57 FR 36472, Aug. 13, 1992; 58 FR 14669, 14670, Mar. 18, 1993; 59 FR 67761, Dec. 30, 1994; 62 FR 26388, May 14, 1997; 62 FR 36456, July 8, 1997; 64 FR 11116, Mar. 8, 1999; 64 FR 53909, Oct. 5, 1999]

§ 230.406 Confidential treatment of information filed with the Commission.

PRELIMINARY NOTES: (1) Confidential treatment of supplemental information or other information not required to be filed under the Act should be requested under 17 CFR 200.83 and not under this rule.

(2) All confidential treatment requests shall be submitted in paper format only, whether or not the filer is an electronic filer. See Rule 101(c)(1)(i) of Regulation S-T (§ 232.101(c)(1)(i) of this chapter).

(a) Any person submitting any information in a document required to be filed under the Act may make written objection to its public disclosure by following the procedure in paragraph (b) of this section, which shall be the exclusive means of requesting confidential treatment of information included in any document (hereinafter referred to as the *material filed*) required to be filed under the Act, *except* that if the material filed is a registration statement on Form S-8 (§ 239.16b of this chapter) or on Form S-3, F-2, F-3 (§ 239.13, § 239.32 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or if the material filed is a registration statement that does not contain a delaying amendment pursuant to Rule 473 (§ 230.473 of this chapter), the person shall comply with the procedure in paragraph (b) *prior* to the filing of a registration statement.

(b) The person shall omit from the material filed the portion thereof which it desires to keep undisclosed (hereinafter called the *confidential portion*). In lieu thereof, the person shall indicate at the appropriate place in the material filed that the confidential portion has been so omitted and filed separately with the Commission. The person shall file with the material filed:

(1) One copy of the confidential portion, marked "Confidential Treatment," of the material filed with the Commission. The copy shall contain an appropriate identification of the item or other requirement involved and, notwithstanding that the confidential portion does not constitute the whole of the answer or required disclosure,

the entire answer or required disclosure, except that in the case where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. The copy of the confidential portion shall be in the same form as the remainder of the material filed;

(2) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain:

- (i) An identification of the portion;
- (ii) A statement of the grounds of the objection referring to and analyzing the applicable exemption(s) from disclosure under §200.80 of this chapter, the Commission's rule adopted under the Freedom of Information Act (5 U.S.C. 552), and a justification of the period of time for which confidential treatment is sought;
- (iii) A detailed explanation of why, based on the facts and circumstances of the particular case, disclosure of the information is unnecessary for the protection of investors;
- (iv) A written consent to the furnishing of the confidential portion to other government agencies, offices, or bodies and to the Congress; and
- (v) The name, address and telephone number of the person to whom all notices and orders issued under this rule at any time should be directed.

(3) The copy of the confidential portion and the application filed in accordance with this paragraph (b) shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to The Secretary, Securities and Exchange Commission, Washington, DC 20549.

(c) Pending a determination as to the objection, the material for which confidential treatment has been applied will not be made available to the public.

(d) If it is determined by the Division, acting pursuant to delegated authority, that the application should be granted, an order to that effect will be entered, and a notation to that effect will be made at the appropriate place in the material filed. Such a determination will not preclude reconsideration whenever appropriate, such as

upon receipt of any subsequent request under the Freedom of Information Act and, if appropriate, revocation of the confidential status of all or a portion of the information in question.

(e) If the Commission denies the application, or the Division, acting pursuant to delegated authority, denies the application and Commission review is not sought pursuant to §201.431 of this chapter, confirmed telegraphic notice of the order of denial will be sent to the person named in the application pursuant to paragraph (b)(2)(v) of this section. In such case, if the material filed may be withdrawn pursuant to an applicable statute, rule, or regulation, the registrant shall have the right to withdraw the material filed in accordance with the terms of the applicable statute, rule, or regulation, but without the necessity of stating any grounds for the withdrawal or of obtaining the further assent of the Commission. In the event of such withdrawal, the confidential portion will be returned to the registrant. If the material filed may not be so withdrawn, the confidential portion will be made available for public inspection in the same manner as if confidential treatment had been revoked under paragraph (h) of this section.

(f) If a right of withdrawal pursuant to paragraph (e) of this section is not exercised, the confidential portion will be made available for public inspection as part of the material filed, and the registrant shall amend the material filed to include all information required to be set forth in regard to such confidential portion.

(g) In any case where a prior grant of confidential treatment has been revoked, the person named in the application pursuant to paragraph (b)(2)(v) of this section will be so informed by registered or certified mail. Pursuant to §201.431 of this chapter, persons making objection to disclosure may petition the Commission for review of a determination by the Division revoking confidential treatment.

(h) Upon revocation of confidential treatment, the confidential portion shall be made available to the public at the time and according to the conditions specified in paragraphs (h) (1)–(2):

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(1) Upon the lapse of five days after the dispatch of notice by registered or certified mail of a determination disallowing an objection, if prior to the lapse of such five days the person shall not have communicated to the Secretary of the Commission his intention to seek review by the Commission under § 201.431 of this chapter of the determination made by the Division; or

(2) If such a petition for review shall have been filed under § 201.431 of this chapter, upon final disposition adverse to the petitioner.

(i) If the confidential portion is made available to the public, one copy thereof shall be attached to each copy of the material filed with the Commission.

[49 FR 13336, Apr. 4, 1984, as amended at 50 FR 19000, May 6, 1985; 58 FR 14669, 14670, Mar. 18, 1993; 60 FR 32824, June 23, 1995; 60 FR 47692, Sept. 14, 1995; 61 FR 30402, June 14, 1996]

§ 230.408 Additional information.

In addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

[Reg. C, 12 FR 4072, June 24, 1947]

§ 230.409 Information unknown or not reasonably available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof could involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions:

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any

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affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

[Reg. C, 12 FR 4072, June 24, 1947, as amended at 14 FR 91, Jan. 7, 1949]

§ 230.410 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

[Reg. C, 12 FR 4073, June 24, 1947]

§ 230.411 Incorporation by reference.

(a) *Prospectus*. Except as provided by this section or unless otherwise provided in the appropriate form, information shall not be incorporated by reference in a prospectus. Where a summary or outline of the provisions of any document is required in the prospectus, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) *Information not required in a prospectus*. Except for exhibits covered by paragraph (c) of this section, information may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in a prospectus subject to the following provisions:

(1) Non-financial information may be incorporated by reference to any document;

(2) Financial information may be incorporated by reference to any document, provided any financial statement so incorporated meets the requirements of the forms on which the statement is filed. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given;